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James Brady, Sarah Cavanagh,
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IN THE UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

JAMES BRADY, SARAH CAVANAGH,
and CHRISTOPHER SULIT, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

DELOITTE & TOUCHE LLP, a limited
liability partnership; DELOITTE TAX
LLP; and DOES 1-10, inclusive,

Defendants.

CASE NO.: C-08-00177

SECOND AMENDED COMPLAINT

[CLASS ACTION]

**1. FAILURE TO PAY OVERTIME
COMPENSATION**

**2. FAILURE TO PROPERLY
COMPENSATE FOR MEAL
BREAKS**

**3. FAILURE TO FURNISH
PROPER PAYCHECK STUBS**

**4. FAILURE TO PAY ALL WAGES
AT END OF EMPLOYMENT**

**5. VIOLATIONS OF BUSINESS
AND PROFESSIONS CODE §
17200**

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Representative Plaintiffs JAMES BRADY, SARAH CAVANAGH, and CHRISTOPHER SULIT (“Plaintiffs”), on behalf of the general Public, and on behalf of all others similarly situated, bring this case to challenge Defendants’ lucrative, repressive and unlawful business practices and hereby demand a trial by jury and allege as follows:

1. This is a class action brought against DEFENDANT DELOITTE & TOUCHE LLP, a limited liability partnership; DEFENDANT DELOITTE TAX LLP, a limited liability partnership; and DOES 1-10 (collectively referred to as “Defendants”) on behalf of a collective class of all salaried persons employed by Defendants in California in Defendants’ Audit line of service but who were not licensed or certified by the State of California in the practice of accounting and were not paid overtime for hours worked in excess of 8 hours in a day or 40 hours in a week, (collectively referred to as “Uncertified Employees”) from January of 2004 to the present.

2. This action alleges that Defendants violated California law when they: (1) failed to pay overtime for all hours worked by Uncertified Employees; (2) failed to properly compensate Uncertified Employees for missed meal breaks; (3) failed to furnish proper paycheck stubs when paying Uncertified Employees; (4) failed to pay all wages owed to Uncertified Employees at the end of their employment; and (5) violated California’s Unfair Business Practices Act, California Business & Professions Code section 17200, *et seq.*

JURISDICTION AND VENUE

3. This class action suit is founded upon California state law including, but not limited to, violations of the California Labor Code, the California Code of Regulations (Industrial Welfare Commission’s Wage Orders) and the California Business & Professions Code, which are subject to the jurisdiction of this court.

5. Venue is proper in the Northern District of California, San Francisco, in that Defendants are limited liability partnerships that are authorized to conduct and do conduct significant amounts of business in San Francisco County as well as throughout the State of California. In particular, Defendants maintain an office in San Francisco, California and a substantial part of the events and omissions giving rise to the claims of the Class occurred at this office.

6. Plaintiffs JAMES BRADY, SARAH CAVANAGH, and CHRISTOPHER SULIT are California residents who worked for Defendants during the class period.

8. At all times herein relevant, Plaintiffs were and now are persons within the Class of persons further described and defined herein.

9. At all times herein, Defendant DELOITTE & TOUCHE LLP, a limited liability partnership, and Defendant DELOITTE TAX LLP, a limited liability partnership, were and are business entities that conduct significant amounts of business within the State of California, including the County of San Francisco, and were and are primarily involved in the business of selling public accounting services.

1 10. Plaintiffs are informed and believe and based thereon allege that the true
2 names and capacities, whether individual, corporate, associate, or otherwise, of DOES
3 1-10, inclusive ("Does"), are unknown to Plaintiffs, who therefore sue said Does by
4 such fictitious names. Plaintiffs will seek leave of court to amend this Complaint to
5 show the true names and capacities when the same have been ascertained.

6 11. Plaintiffs are informed and believe and based thereon allege that at all
7 times herein mentioned Defendants were and are companies, corporations, business
8 entities, individuals, and partnerships, licensed to do business and actually doing
9 business in the State of California. As such, and based upon all the facts and
10 circumstances incident to Defendants' business in California, Defendants are subject
11 to the California Labor Code, the applicable Wage Orders issued by the Industrial
12 Welfare Commission, and California Business and Professions Code section 17200, *et*
13 *seq.*

14 12. Plaintiffs are informed and believe and based thereon allege that each of
15 the Does is responsible in some manner for the conduct alleged herein and for the
16 injuries suffered by Plaintiffs and the members of the Class.

17 13. Plaintiffs are informed and believe and based thereon allege that Does
18 were the agents, servants and/or employees of the other Defendants and in doing the
19 things hereinafter alleged, and at all times, were acting within the scope of their
20 authority as such agents, servants and employees, and with the permission and consent
21 of the other Defendants.

22 14. At all times herein mentioned, Defendants and each of them, were
23 members of, and engaged in, a joint venture, partnership and common enterprise, and
24 acting within the course and scope of, and in pursuance of, said joint venture,
25 partnership and common enterprise.

26 15. At all times herein mentioned, the acts and omissions of various
27 Defendants, and each of them, concurred and contributed to the various acts and
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omissions of each and all of the other Defendants in proximately causing the injuries and damages herein alleged.

16. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided, abetted, and consented to the acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages herein alleged.

ADDITIONAL FACTS

17. During the class period, Defendants regularly employed salaried workers in its Audit line of service who were not licensed or certified by the State of California in the practice of accounting; in other words, Defendants' Uncertified Employees were not Certified Public Accountants.

18. Defendants uniformly classified all Uncertified Employees as exempt from overtime under the California Labor Code and the Industrial Welfare Commission's Wage Orders.

19. During their employment by Defendants, Plaintiffs worked more than 8 hours in a day and/or 40 hours in a week but in keeping with uniform company policy with respect to all Uncertified Employees, Defendants did not pay Plaintiffs overtime compensation for those hours. In addition, Plaintiffs were frequently unable to take proper meal breaks as required by California law.

20. Although classified as exempt, Plaintiffs and the class members should have been paid overtime for all qualifying hours but Defendants uniformly failed to pay such overtime.

CLASS ALLEGATIONS

21. This action may properly be maintained as a class action pursuant to section 382 of the California Code of Civil Procedure and Federal Rule of Civil Procedure 23. All claims alleged herein arise under California law for which

1 Plaintiffs seek relief authorized under California law. This Class is comprised of, and
2 defined as:

3 All persons employed by Defendants in the State of California as
4 salaried exempt employees in Defendants' Audit line of service
5 with positions below the level of manager (positions referred to
6 by Defendants at various times as "Staff Accountants,"
7 "Associates," "Semis," "Senior Associates," and "Seniors") at any
8 time within four years of the filing of this complaint to the present
9 but who were not licensed or certified by the State of California in
10 the practice of accounting and were not paid overtime for hours
11 worked in excess of 8 hours in a day or 40 hours in a week (at
12 times referred to herein as the "Class").

13
14 22. The proposed Class is ascertainable in that its members can be identified
15 using information contained in Defendants' payroll and personnel records.

16 23. The members of the Class are sufficiently numerous such that joinder of
17 all members would be impracticable. Further, the disposition of the claims of the
18 Class in a class action will provide substantial benefits to both the parties and the
19 Court.

20 24. The California Labor Code and Wage Order provisions upon which
21 Plaintiffs base their claims are broadly remedial in nature. These laws and labor
22 standards serve an important public interest in establishing minimum working
23 conditions and standards in California. These laws and labor standards protect the
24 average working employee from exploitation by employers who may seek to take
25 advantage of superior economic and bargaining power in setting onerous terms and
26 conditions on employment.

27 25. The nature of this action and the format of laws available to Plaintiffs and
28 the Class make the class action format a particularly efficient and appropriate

1 procedure to redress the wrongs alleged herein. Further, this case involves large
 2 corporate Defendants and a large number of individual employees with many
 3 relatively small claims. If each employee were required to file an individual lawsuit,
 4 the corporate Defendants would necessarily gain an unconscionable advantage since
 5 they would be able to exploit and overwhelm the limited resources of each individual
 6 plaintiff with their vastly superior legal and financial resources.

7 26. Requiring each member of the Class to pursue an individual remedy
 8 would also discourage the assertion of lawful claims by employees who would be
 9 disinclined to file an action against their former and/or current employer.

10 27. Moreover, the prosecution of separate actions by the individual Class
 11 members would create a substantial risk of inconsistent or varying adjudications with
 12 respect to individual Class members against Defendants.

13 28. There is a well-defined community of interest in the questions of law and
 14 fact involved affecting the parties to be represented. The questions of law and fact
 15 common to the Class predominate over questions which may affect individual Class
 16 members. These questions of law and fact include, but are not limited to, the
 17 following:

18 (a) Whether each Class member was licensed or certified by the State
 19 of California in the practice of accounting;

20 (b) Whether Defendants classified each Class member as exempt;

21 (c) Whether Defendants were required by law to pay the Class
 22 overtime for all hours worked in excess of 8 hours in a day and 40 hours in a week;

23 (d) Whether Defendants implemented and engaged in a systematic
 24 practice whereby they improperly failed to pay for all overtime hours worked by the
 25 Class;

26 (e) Whether Defendants denied members of the Class wages in order
 27 to increase profits and lower costs;

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1 (f) Whether Defendants failed to keep, maintain and/or furnish
2 accurate records of the actual hours worked by the Class;

3 (g) Whether the Class received appropriate meal breaks in compliance
4 with California law;

5 (h) Whether the Class members no longer employed by Defendants
6 are entitled to “waiting time” penalties;

7 (i) Whether Defendants’ conduct constituted an illegal, unfair, or
8 deceptive business practice;

9 (j) Whether Defendants’ systematic acts and practices violated, *inter*
10 *alia*, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, and
11 1194, the applicable Wage Orders of the Industrial Welfare Commission, and
12 Business & Professions Code section 17200, *et seq.*;

13 (k) Whether the Class is entitled to compensatory damages under the
14 Labor Code; and

15 (l) Whether Class members are entitled to injunctive relief.

16 29. Proof of a common business practice or factual pattern which Plaintiffs
17 experienced is representative of that experienced by the Class and will establish the
18 right of each of the Class members to recover on the causes of action alleged.

19 30. Such a pattern, practice and uniform administration of illegal corporate
20 policies with respect to employee compensation, as described herein, creates an
21 entitlement in common for Plaintiffs and the Class to recover in a civil action for the
22 unpaid balance of the full amount of the overtime compensation owing, including
23 interest thereon, waiting time penalties, reasonable attorney’s fees and costs of suit
24 according to the mandate of California Labor Code section 1194, *et seq.*

25 31. Furthermore, Plaintiffs and the Class are entitled in common to
26 restitution and disgorgement of funds withheld improperly by Defendants.

27 Accordingly, Plaintiffs, on behalf of the Class, will seek the creation of a common
28 fund made up of the aforementioned damages.

32. Plaintiffs assert claims that are typical of the claims of the Class because they were employed by Defendants as salaried exempt employees in Defendants' Audit line of service but were not licensed or certified by the State of California in the practice of accounting and were not paid overtime for hours worked in excess of 8 hours in a day or 40 hours in a week and were therefore subjected to the same uniform policies and procedures as the Class and similarly injured due to Defendants' actions.

33. Plaintiffs will fairly and adequately represent and protect the interests of the Class in that they have no disabling conflicts of interest that would be antagonistic to other members of the Class. Moreover, Plaintiffs seek relief that is not antagonistic or adverse to the members of the Class in that the infringement of Plaintiffs' rights and the damages Plaintiffs have suffered are typical of all other members of the Class.

Additionally, Plaintiffs have retained counsel that is competent and experienced in class action litigation.

34. Plaintiffs and the Class have all similarly suffered irreparable harm and damages as a result of Defendants' unlawful and wrongful conduct. This action will provide substantial benefits to both the Class and the public since, absent this action, Defendants' unlawful conduct will continue unremedied and uncorrected.

35. Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief or corresponding declaratory relief with regard to members of the Class as a whole, as requested herein.

Likewise, Defendants' conduct as described above and below is unlawful, continuing and capable of repetition and will continue unless restrained and enjoined by the Court.

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3 **FIRST CAUSE OF ACTION**4 **(Failure to Pay Overtime Wages in Violation of the California Labor Code and**
5 **Applicable Wage Orders of the California Industrial Welfare Commission**
6 **Against All Defendants and DOES 1-10)**7 36. The preceding paragraphs of this Complaint are realleged and
8 incorporated by reference.9 37. Pursuant to California Labor Code section 1194, Plaintiffs may bring a
10 civil action for overtime wages directly against the employer without first filing a
11 claim with the Division of Labor Standards Enforcement. Further, such private
12 actions have the support and approval of the Division of Labor Standards
13 Enforcement.14 38. During all relevant time periods, California Labor Code section 510
15 applied to Plaintiffs and the Class and provided that any work performed by a
16 non-exempt employee in excess of 8 hours in a day or 40 hours in a week, must be
17 compensated at one and one-half times the employee's regular rate of pay.
18 Defendants and each of them, did not compensate Plaintiffs or the Class for all hours
19 worked in excess of 8 hours in a day or 40 hours in a week at one and one-half times
20 their regular rate of pay.21 39. During their employment by Defendants, Plaintiffs and members of the
22 Class were required to work more than 8 hours in a day and/or 40 hours in a week
23 without receiving overtime pay.24 40. However, Plaintiffs and the Class were not exempt and should have
25 received overtime wages in a sum according to proof for the hours they worked
26 pursuant to the provisions of the California Labor Code and the applicable Wage
27 Orders issued by the Industrial Welfare Commission of California.
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44. Plaintiffs and the Class also request relief as described below.

(Failure to Properly Compensate for Missed Meal Breaks in Violation of the California Labor Code Against All Defendants and DOES 1-10)

47. Defendants and each of them, failed to provide Plaintiffs and the Class the meal periods required under California law.

48. Defendants' failures proximately caused Plaintiffs and the Class to be deprived of wages and therefore entitles Plaintiffs and the Class to one hour of additional pay for each improper meal break.

49. Plaintiffs and the Class also request relief as described below.

THIRD CAUSE OF ACTION

(Failure to Furnish Accurate Itemized Wage Statements in Violation of the California Labor Code Against All Defendants and DOES 1-10)

50. The preceding paragraphs of this Complaint are realleged and incorporated by reference.

51. California Labor Code sections 226(a) and 1174 require employers to maintain and furnish each employee with an itemized statement showing the total hours worked by the employee on a semi-monthly basis or with each paycheck.

52. California Labor Code section 226(e) provides that if an employer knowingly and intentionally failed to comply with this section then the employee is entitled to recover the greater of actual damages or \$50 dollars for the initial violation and \$100 dollars for each subsequent violation, up to \$4,000, plus costs and reasonable attorney's fees.

53. Defendants knowingly and intentionally failed to furnish and maintain for Plaintiffs and the Class the records required under California law. As a result, Plaintiffs and the Class are entitled to the amounts provided in Labor Code section 226(e).

54. Plaintiffs and the Class also request relief as described below.

FOURTH CAUSE OF ACTION

(Failure to Timely Compensate for All Wages Due at End of Employment in Violation of the California Labor Code Against All Defendants and DOES 1-10)

55. The preceding paragraphs of this Complaint are realleged and incorporated by reference.

1 56. California Labor Code section 201 required Defendants and each of
2 them, to pay their employees who were discharged all wages due immediately upon
3 discharge. Labor Code section 202 required Defendants and each of them, to pay their
4 employees who resigned all wages due within 72 hours of the resignation. Defendants
5 and each of them, in violation of these sections, willfully failed to pay Plaintiffs and
6 the Class all wages due and owing within the timeframes required by these statutes.

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8 57. Plaintiffs and all other Class members did not secrete or absent
9 themselves from Defendants nor refuse to accept the earned and unpaid wages from
10 Defendants. Defendants' illegal actions proximately caused damages to Plaintiffs and
11 the Class.

12 58. Accordingly, Defendants and each of them, are liable for waiting time
13 penalties to Plaintiffs and the Class pursuant to Labor Code section 203 in an amount
14 according to proof.

15 59. Plaintiffs and the Class also request relief as described below.

16 17 **FIFTH CAUSE OF ACTION**

18 **(Violation of Business & Professions Code Section 17200, *et seq.*, Unfair Business** 19 **Practices Against All Defendants and DOES 1-10)**

20 60. The preceding paragraphs of this Complaint are realleged and
21 incorporated by reference.

22 61. Business and Professions Code section 17200, *et seq.*, prohibits acts of
23 unfair competition which shall mean and include any "unlawful, unfair, or fraudulent
24 business act or practice." Plaintiffs and the Class allege that at all relevant times
25 Defendants and each of them, have engaged in unfair business practices in California
26 by utilizing the illegal employment practices outlined above, including causing
27 Plaintiffs and the Class to perform services without receiving proper compensation as
28

1 required by the California Labor Code and the applicable Wage Orders of the
2 Industrial Welfare Commission.

3 62. Defendants' practices are illegal and violate Labor Code sections 201,
4 202, 203, 226, 226.7, 510, 512, 1174, and 1194, and the applicable Wage Orders of
5 the Industrial Welfare Commission. Furthermore, Defendants' policies and
6 procedures constitute unfair business practices, unfair competition, and provide an
7 unfair advantage over Defendants' competitors.

8 63. Defendants' actions entitle Plaintiffs and the Class to seek the remedies
9 available pursuant to section 17200.

10 64. Additionally, under California law, wages unlawfully withheld from an
11 employee constitute an unfair business act as defined by section 17200, entitling
12 Plaintiffs and the Class to a restitution remedy authorized by section 17203.

13 65. Plaintiffs and the Class seek full restitution and disgorgement of said
14 monies from Defendants, as necessary and according to proof, to restore any and all
15 monies, including interest, withheld, acquired or converted by Defendants by means
16 of the unfair practices complained of herein. Plaintiffs and the Class further seek the
17 appointment of a receiver as necessary. Plaintiffs and the Class also seek an
18 injunction and declaratory relief to remedy and prevent Defendants' improper
19 practices.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for judgment and relief as follows:

22 1. An Order determining that this action is a proper class action and
23 certifying an appropriate plaintiff Class; certifying Plaintiffs as Class representatives;
24 and appointing Plaintiffs' counsel as counsel for the Class;

25 2. For an injunction against Defendants' continued application of policies
26 that violate California law;
27
28

8. Such other and further relief as the Court deems proper.

DATE: June 30, 2008

MILSTEIN, ADELMAN & KREGER, LLP

/s/STEVEN S. ELSTER

By: STEVEN S. ELSTER
Attorney for Plaintiffs JAMES BRADY,
SARAH CAVANAGH, and CHRISTOPHER
SULIT, on Behalf of Themselves, All Others
Similarly Situated, and On Behalf of the
General Public.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action existing in this lawsuit.

DATE: June 30, 2008

MILSTEIN, ADELMAN & KREGER, LLP

/s/ STEVEN S. ELSTER

By: STEVEN S. ELSTER

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